the single corporation — which bought the properties of the former corporations outright, *Richardson* v. *Buhl*, 77 Mich. 632. The state of the law at the present writing is that the first and second of these, since they are without central incorporation, are within the plain rule against combination in restraint of trade; while the third and fourth, even though they have central incorporation, are under the same suspicion.

From step to step in this succession there is an evolution towards integration. Indeed the necessity of rapid organization upon the basis of unity was obvious if the law against combination was to be avoided. What makes the holding as to the organization of this Northern Securities Company of much less importance is that the process of integration had gone but half the way. There was a central corporation; but the constituent corporations were left in existence. Long before this new decision it had been recognized that the scheme of the holding company might be illegal as leaving in existence a combination in restraint of trade. *People* v. *Chicago Gas Trust Co.*, 130 Ill. 268; *Pearsall* v. *No. Pacific Co.*, 161 U. S. 646. The legality of the organization of a great industrial company upon the basis of a new incorporation is the crucial question at the present moment. The permanent interest in the Northern Securities Case must be the bearing of it upon the ultimate holding as to the legality of this final form of consolidation — a central corporation in which the constituent companies go out of existence. In truth, these last two forms are very different.

So far had the law gone that at the time of the organization of the Northern Securities Company one might have predicted that it would be obnoxious to established principles if the court applied those principles in a broad way to get at the substance of the matter rather than at the forms employed. The obvious fact was that two great railroad systems had entered into a combination in suppression of competition. It was true that in form these constituent companies were not parties to the combination. The court refused to be stopped by such a fiction. That is the portentous thing — this attitude of the court. This decision against the scheme of the holding company is a decision against a combination in fact, that is all. The present form of organization of the great industrial companies is, therefore, not touched by this decision, for the single corporation is not a combination. *Trenton Potteries Co.* v. *Oliphant*, 58 N. J. Eq. 507; *Oakdale Mfg. Co.* v. *Garst*, 18 R. I. 484. So long as incorporation is permitted to a small enterprise, it must be permitted to a large enterprise. Any danger there may seem to be in this Northern Securities decision is not in the decision itself, but in the possibility of an extension of it. B. W.

CONSTITUTIONALITY OF MUNICIPAL FUEL PLANTS. — Aroused by the recent scarcity of fuel, the legislature of Massachusetts has again consulted the Supreme Court of the state as to the constitutionality of proposed legislation authorizing cities and towns to establish and operate municipal coal yards. *In re Municipal Fuel Plants*, 66 N. E. Rep. 25; *cf. Opinions of the Justices*, 155 Mass. 598; see 6 HARV. L. REV. 100. On the previous occasion five of the justices declared that such a law would be unconstitutional, on the ground that buying and selling fuel is not a public use for which taxation can be authorized, and also that it is not a legitimate governmental function. Mr. Justice Holmes, however, dissented on both points, and Mr. Justice Barker gave a qualified dissent. The present justices,

though adhering in the main to the principles formerly expressed, practically take the position of Mr. Justice Barker. In certain emergencies, they say, the government alone might be able to obtain fuel, and might then constitutionally buy and sell for the relief of the community. Mr. Justice Loring refuses to join in this qualification of the former opinion. The view taken by Mr. Justice Holmes has now no advocate on the bench.

The admission by the court that under the circumstances described municipalities might establish coal yards seems of little practical importance. Such a situation would rarely occur and would of necessity be very temporary; indeed, Mr. Justice Loring thinks it impossible. The main significance of the opinion lies in the continued and vigorous opposition of the court to radical extension of the doctrine of municipal ownership. The growing popularity of that doctrine has been attested by recent municipal elections. The extent to which popular feeling, if uncontrolled by the courts, is likely to carry it is shown by the experience of British cities. The corporation of Glasgow now owns and in many instances operates not only gas and water plants and street railways, but also scores of ordinary businesses, such as laundries and retail stores. Whether the courts may restrain and overrule the legislature in this matter, and, if they may, where they will draw the line, are therefore questions of great and increasing importance.

The legal question presented obviously is not whether such a change in our theory of the state is advisable, but whether it is constitutional. That the courts will hold it unconstitutional for a state to enter into ordinary private callings seems sure. It is probable that they will lay down some such test as "virtual monopoly," permanent control of the supply or service. See 16 HARV. L. REV. 73; *cf.* *State* v. *City of Toledo*, 48 Oh. St. 112. When a business supplying a general public need is of such a nature that a substantial monopoly is necessary or inevitable either from economic reasons or because required by the public welfare, then the state may regulate it and even engage in it. But it cannot spend the public money in operating private industries that may be well left to the regulation of competition. Under the test suggested the mining of coal might be considered a public calling, but the retail selling could not be so held. Monopolistic combinations of coal dealers, however, while not economically necessary may be so easily formed and maintained because of the absolute control of the supply by a few men that the business might be distinguished from the sale of ordinary articles. But the actual situation does not seem to warrant such a dangerous extension of the class of public callings. If the mine operators should extend their control over the entire distribution of the coal, control of the retail selling by municipalities might be considered constitutional but would be of little benefit. If the state of Pennsylvania acquired and operated the coal mines, there would be no reason why Massachusetts or its municipalities should control the distribution. It should be noticed that the court in the principal case is not rendering a decision, but is merely giving an advisory opinion. It might be more reluctant to hold actual legislation unconstitutional, but there is nothing to indicate that it would withdraw from its present position.

INTERESTED DIRECTOR'S RIGHT TO VOTE AS STOCKHOLDER. — The validity of the recent $200,000,000 loan to the United States Steel Corporation has again been contested, this time on the ground that the private